



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: HospitalKlean, Inc.

File: B-245158; B-245160; B-245163

Date: December 17, 1991

Theodore M. Bailey, Esq., Law Office of Ronald J. Shaw, P.C., for the protester.
Joseph Goldstein, Esq., Department of the Air Force, for the agency.
Stephen J. Gary, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's proposals for hospital aseptic management services were properly downgraded in the area of proposed staffing where agency had compared protester's staffing levels with government estimates, determined that protester's levels were too low, advised protester during discussions that its staffing levels were considered inadequate, and protester nonetheless failed to increase staffing in its final proposals.
2. Objection that agency's estimates of required staffing levels were too high, and that lower levels proposed by protester were adequate, is without merit where protester fails to show that agency's estimates clearly were unreasonable; protester's mere assertion that its own calculations are superior to agency's is not sufficient.
3. Contracting agency held meaningful discussions concerning staffing where detailed deficiency letter provided to protester specifically mentioned inadequate staffing, and protester's subsequent arguments indicate it was advised of staffing weaknesses but simply chose not to increase its staffing levels because it disagreed with agency's assessment that the levels it proposed were too low.

DECISION

HospitalKlean, Inc. (HKI) protests the Air Force's award of three hospital services contracts to other offerors under request for proposals (RFP) Nos. F33600-91-R-0028 (Carswell Air Force Base (AFB)), F33600-91-R-0039 (March AFB), and F33600-91-R-0043 (Tyndall AFB). HKI

asserts that its proposals under these solicitations were improperly evaluated.

We deny the protests.

The RFPs were part of a group of identical solicitations issued in January 1991, for hospital aseptic management services (HAMS) at 18 AFBs. HKI submitted proposals under 13 of the solicitations. The RFPs provided that award would be made to the low, technically acceptable offeror, with technical acceptability being determined on the basis of the following criteria, listed in descending order of importance (categories A and B having equal weight):

- A. Quality Program/Work Procedures
- B. Staffing & Scheduling
- C. Corporate Management Support
- D. Training Program
- E. Supplies & Equipment

With regard to the scheduling subfactor under category B, the solicitations required that a single work schedule be prepared for the largest facility for which an offeror was submitting a proposal; that schedule would then be evaluated as part of the proposals for all facilities. These evaluation criteria, the solicitations advised, would "be the basis for the entire Technical Proposal score."

The Air Force's Technical Review Board (TRB) found that HKI's initial proposals had major weaknesses in evaluation category B, Staffing and Scheduling. The agency considered HKI's proposed staffing levels to be far too low, and, accordingly, gave HKI very low initial scores in that category. The panel also noted in its worksheets that the firm had failed to provide the required work schedule. In HKI's case, the schedule was required for Carswell AFB, since that was the largest facility for which the firm submitted a proposal. In the absence of the schedule, which was to be used in evaluating all proposals submitted, the panel gave all three of HKI's initial proposals a score of zero for scheduling.

The Air Force provided HKI notice of these and other less serious deficiencies in the course of discussions with the firm; the weaknesses were formally noted in a detailed, six-page deficiency letter provided to HKI on June 5. On July 8, HKI submitted best and final offers (BAFO). After evaluating the revised proposals, the Air Force determined that HKI had not increased its staffing levels at all and still had not provided the requested work schedule. Based primarily on these continuing defects, the agency again scored HKI's proposals low in these areas. As a consequence, although its proposals received generally high

scores in other evaluation categories, HKI's overall scores were so low that it ranked eighth out of 9 offerors for March AFB, eighth out of 10 for Tyndall, and ninth out of 10 for Carswell. Based on these poor results, the agency notified HKI that its proposals had been found technically unacceptable. These protests followed.

HKI asserts that the evaluation of its proposals was unreasonable. HKI bases its conclusion in part on apparent inconsistencies in the way its proposals were evaluated; while the Air Force found 6 of the 13 proposals HKI submitted to be unacceptable, it found 7 others to be acceptable. According to HKI, all 13 proposals, including the 3 at issue here, were virtually identical. HKI concludes that this disparate treatment of essentially identical proposals indicates that the agency's evaluation was arbitrary. The protester also takes issue with the evaluators' determination that it had not included a schedule in its proposal and its resultant score of zero for scheduling. Finally, HKI asserts that the agency failed to hold meaningful discussions.

The evaluation of proposals is primarily within the discretion of the procuring agency, not our Office; the agency is responsible for defining its needs and the best means of accommodating them, and must bear the consequences of a defective evaluation. Consequently, we will not make an independent determination of the merits of proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation factors. Litton Sys., Inc., B-239123, Aug. 7, 1990, 90-2 CPD ¶ 114.

Here, the record shows that the evaluation was reasonable. The TRB's methodology was consistent for all proposals. The panel compared offerors' proposed staffing levels at each facility with Air Force estimates of the staffing actually required for that specific facility; the points assigned for the category were a simple percentage based on the two figures (proposed staffing/government estimate). HKI's staffing levels were lower than the government estimates and the levels proposed by virtually all other offerors. At Carswell, for example, HKI ranked lowest in this area out of the 10 offerors.

Contrary to HKI's contention that the agency's disparate determinations of acceptability regarding its proposals indicate that the evaluations were arbitrary, the record indicates the different results were primarily attributable to the different staffing requirements at the different facilities. In this regard, the estimates of the staffing requirements varied considerably from hospital to hospital, since there was a wide range in the size of the facilities.

This being the case, given the alleged similarity of all of HKI's proposals, it is not surprising that the proposed staffing would be found adequate for certain facilities but too low for others; staffing levels adequate for small hospitals were deemed inadequate for larger ones. This reasonable approach is born out by the evaluation results. At one smaller hospital (not involved in these protests) where HKI's proposed staffing was nearly equal to the government's estimate, the staffing (and the proposal overall) were found acceptable. Similarly, at another smaller facility for which HKI was found acceptable, its score in staffing was over four times as high as the score it received for Carswell, three times as high as for Tyndall, and nearly twice as high as for March. We conclude that the agency had a reasonable basis for downgrading HKI in the staffing area.

HKI asserts that it was not advised of the staffing deficiencies, and that the agency therefore failed to provide meaningful discussions.

In a negotiated procurement, the Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(4)(B) (1988), as reflected in Federal Acquisition Regulation § 15.610(b), requires that written or oral discussions be held with all responsible sources whose proposals are within the competitive range. Such discussions must be meaningful, and in order for discussions to be meaningful, agencies must point out deficiencies in proposals unless doing so would result either in disclosure of one offeror's approach to another or in technical leveling. The Faxon Co., 67 Comp. Gen. 39 (1987), 87-2 CPD ¶ 425.

Again, the record does not support HKI's contentions. The agency's June 5 deficiency letter contained an entire, separate section on staffing inadequacies. In addition, the Air Force reports that during discussions it went through an extensive verbal comparison of the offeror's proposals to the government estimates on a site-by-site basis, and pointed out that HKI's manpower levels were considerably lower than what the agency considered necessary to perform the contracts. Although the protester denies it was provided specific government estimates, the firm's own statements in connection with the protests indicate that it was told enough to be aware of the deficiency. As HKI states in its comments on the agency's report:

"The second portion of the discussions related to proposed staffing. Questions were asked of Tyndall, . . . March, . . . and Carswell. . . . The government's concerns . . . were not rational. They were requesting that the offeror provide additional manhours . . . when in fact they are

not required to do so according to the solicitation. Additional manhours will undoubtedly increase the price for services and are not necessary. . . ."

These and similar statements by HKI indicate that its decision not to increase the staffing levels in its revised proposals was a business judgment, aimed at keeping its proposed prices low,¹ not a result of inadequate discussions. We conclude that the agency held meaningful discussions in this area. See The Faxon Co., supra; Johnson, Basin and Shaw, Inc., B-240265 et al., Nov. 7, 1990, 90-2 CPD ¶ 371.

HKI also disagrees with the agency's view that its proposed staffing was too low. As the comments quoted above indicate, HKI insists that its proposed staffing levels--based in part on its experience as an incumbent under a number of HAMS contracts--were adequate, and that the agency's concerns were "not rational." We will not question an agency's determination of its manpower needs on the basis that a protester believes its own calculations are superior to the agency's, without a clear showing that the agency's determination is unreasonable. See Mark Dunning Industries, Inc., B-230058, Apr. 13, 1988, 88-1 CPD ¶ 364. HKI has made no such showing. The agency developed its site-specific estimates based on its experience over many years with HAMS contracting, as well as its knowledge of the 13 facilities for which services were being procured and the specific tasks involved under the contracts. Aside from its general assertion that its own calculations are correct based on its prior experience, HKI has presented no evidence supporting its position; HKI has not attempted to explain why the agency's estimates should be found to be overstated or, conversely, why the agency incorrectly concluded that HKI's estimates are understated. Moreover, HKI's proposal of the same staffing level for the different facilities, notwithstanding their varying sizes (see discussion above), indicates that its own calculations were deficient.

As for the evaluation of scheduling, where HKI received a score of zero for both its initial and final proposals, we find the agency's action to be responsible. This score was based on the TRB's determination that the firm did not submit the required work schedule for Carswell AFB with its

¹In this regard, although the agency notes that HKI's prices were low under these three solicitations, it believes those prices to be a reflection of its inadequate staffing levels.

initial proposals and, after being advised of this deficiency, also failed to submit the schedule with its final proposals. This determination is documented in the evaluation record, where the worksheets include handwritten notations indicating: (1) the work schedule was not included in the initial proposals; (2) the agency asked HKI to provide one; (3) HKI told the agency a schedule would be submitted; and (4) none was included with the final proposals.

HKI asserts that it was never advised of the agency's view that it had not submitted the schedule; again, therefore, the protester argues that the agency failed to hold meaningful discussions. In the alternative, HKI states that it did submit the schedule with its initial proposals and again with its final proposals; the firm has provided our Office with a copy of what it alleges it submitted.


As to the first argument, the record shows that HKI was told of the defect. The agency's deficiency letter--which HKI states was hand-delivered to it by the agency on June 5--included the following paragraph:

"DEFICIENCY REPORT FOR CARSWELL/ALL; NATURE OF DEFICIENCY: . . . HKI did not provide a completed schedule of cleaning for Carswell (the largest hospital . . . proposed)."

With respect to HKI's claim that it submitted the required schedule, the agency reports that the document submitted with the protests, even if it had been submitted with HKI's proposals, would not have been considered an acceptable schedule. First, the purported schedule is not labeled as such and covers Tyndall, not Carswell, the largest facility for which HKI submitted a proposal. Further, HKI's document provides only sketchy information concerning building location and portion of the week (e.g., Monday through Friday or Saturday and Sunday), and lacks detailed scheduling information that was included in other firms' schedules. For example, the schedule submitted by the awardee under two of these solicitations provides considerable detail regarding specific hours and tasks that is not included in HKI's schedule. We conclude that HKI either did not furnish a schedule with its proposal, or furnished an unlabeled

schedule for the wrong facility that lacked the required detail. In either case, we think the agency properly scored HKI's proposal in this area.²

The protests are denied.


for James F. Hinchman
General Counsel

²In any event, it is fairly clear that the scoring under this subfactor made no difference in the outcome. Scheduling accounted for only 12 percent of the points available for category B; even if HKI had received the maximum score for scheduling on these three proposals, its category B scores and overall scores still would have been at or near the bottom of the ranking due to its very low staffing scores.